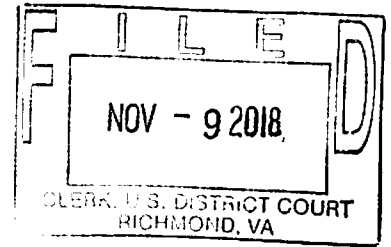


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



DEVON M. BYRD,

Petitioner,

v.

Civil Action No. **3:18CV623**

COMM. OF VA.,

Respondent.

MEMORANDUM OPINION


Petitioner, a Virginia state prisoner proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. By Memorandum Order entered on October 4, 2018, the Court directed Petitioner to pay the \$5.00 filing fee or submit an appropriate *in forma pauperis* affidavit within fifteen (15) days of the date of entry thereof. Additionally, the Court informed Petitioner that in the United States District Court for the Eastern District of Virginia, all *pro se* petitions for writs of habeas corpora must be filed on a set of standardized forms. *See* E.D. Va. Loc. Civ. R. 83.4(A). The Court mailed Petitioner the standardized form for filing a § 2254 petition and directed him to complete and return the form to the Court within fifteen (15) days of the date of entry hereof. The Court warned Petitioner that the failure to complete and return the form in a timely manner would result in dismissal of the action. *See* Fed. R. Civ. P. 41(b).

More than fifteen (15) days have elapsed since the entry of the October 4, 2018 Memorandum Order and Petitioner has not responded. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE.**

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this matter. A certificate of appealability will be DENIED.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 8 Nov. 2018
Richmond, Virginia



John A. Gibney, Jr.
United States District Judge